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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)**

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In re D.S., a Person Coming Under the  
Juvenile Court Law.

C087164

THE PEOPLE,

(Super. Ct. No. JV138482)

Plaintiff and Respondent,

v.

D.S.,

Defendant and Appellant.

Appointed counsel for the minor D.S. asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Finding no arguable error that would result in a disposition more favorable to the minor, we will affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

## **FACTUAL AND PROCEDURAL BACKGROUND**

A juvenile wardship petition alleged two counts of lewd or lascivious acts within a year by the then 14-year-old minor. (Pen. Code, § 288, subd. (a).) The victim was between seven and eight years old. At the jurisdiction hearing, testimony was offered by the victim, as well as her mother, father, and brother. The minor and several others also testified.

### ***Victim's Testimony***

The victim, who was 11 at the time of the hearing, testified that, on more than one occasion, the minor had touched her vagina with his hand, under her clothing. He had also put his mouth on her vagina “[a] lot.” The minor told her not to tell because she would be in more trouble than he would be.

The minor also told her to put her hand on his penis. This was followed by him taking her hand and putting it under his pants. When she wanted to stop, he told her she had to do it. He also told her to put his penis in her mouth—and forced her when she refused. She testified it happened more than once, on different days.

The minor would touch her in the upstairs computer room and in the living room of her home. About four times, it happened in her brother’s presence in the living room, but her brother did not see because the victim and the minor were under a blanket.

The victim eventually told her mother some of what was going on. Her mother called the police.

### ***Victim's Mother's Testimony***

The victim’s mother testified that the victim had complained to her about something like a rash on her bottom. When the mother asked to see it, the victim “totally freaked out,” ran upstairs, and put on sunglasses. The mother could soon see the victim was crying.

After the mother assured the victim she would not get in trouble, the victim confided that the minor was doing something to her. She told a little of what was going on—said it was the “s” word (i.e., sex) and said the minor made her kiss his “pee-pee” or “privates.” The mother took her to the police department.

The following day, the mother took the victim to the doctor to be tested for sexually transmitted diseases. The victim was crying during the doctor’s office visit and did not want to talk about it. The mother also took the victim to see a therapist; she subsequently had 12 to 15 appointments.

The mother also testified that shortly after the victim told her of the minor’s actions, the victim stopped wetting the bed every night. The victim had also started not wanting to go to her father’s house.

### ***Victim’s Father’s Testimony***

The victim’s father testified that his son was friends with the minor, who was a year or two older than the victim’s brother. The minor would come over to the father’s house after the father and mother split up.

The father recalled a time when he was watching the minor, the victim, and the victim’s brother. The father was barbequing in the yard when the victim’s brother came up and said the victim and the minor were cheating at hide and seek. He said they had gone into the bedroom and locked the door. The father went, banged on the door, and said, “what are you doing locking the door?” The victim unlocked the door, and the father saw the minor on the bunk bed. The victim and the minor wore expressions of “[w]e’re going to get in trouble.”

Another time, the victim’s brother brought the minor over, and the kids were on the trampoline. The victim was grabbing the minor’s shorts, and the minor shouted, “[the victim] keeps on grabbing my private.”

### ***Victim's Brother's Testimony***

The victim's brother testified that he had known the minor since the third grade. He said the victim and the minor did not talk very much. He never saw them alone together in the house and had no memory of them under a blanket together. He saw the minor once poke the victim.

The brother never saw the minor acting differently or unusually around the victim. But he recalled that at some point the victim acted differently around the minor: She would "just be really tense."

### ***The Minor's Testimony***

The minor testified, denying he ever touched the victim or made inappropriate contact. He explained he was friends with the victim's brother both before and after the mother moved out. He testified there was never an opportunity to be alone with the victim in the house. He denied ever talking to the victim alone or being alone together in the same room though he agreed he had once playfully poked the victim with his finger.

He also testified that the victim had touched his private part when they were on the trampoline. He knew it was not appropriate to touch another child's private parts.

### ***Juvenile Court Sustains the Petition***

The juvenile court sustained the petition as to both counts. It noted the minor undisputedly knew the wrongfulness of the alleged acts. It then found the minor willfully touched the victim's vaginal area under her clothes on at least one occasion and had willfully put the victim's hand or lips on his penis on at least one occasion.

The court explained that given the nature and detail of the victim's testimony, the court's observation of her testimony, and the overall weight of the evidence, no other credible conclusion existed but that the alleged conduct had happened. The court found no basis or evidence that the victim fabricated the events. The juvenile court also cited

the victim's father's testimony of finding the minor and victim alone in a locked room. That testimony contradicted the minor's testimony that he was never alone with the victim in a locked room.

### ***The Disposition Hearing***

At the disposition hearing, the juvenile court adjudged the minor a ward of the court, placed him on juvenile probation, and committed him to his mother's custody under probation's supervision. The court ordered the minor to participate in a sexual offender treatment program and imposed a \$100 restitution fine.

### **DISCUSSION**

Counsel filed an opening brief setting forth the facts of the case and requests that we review the record and determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) The minor was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from the minor.

Having examined the record, we find no arguable error that would result in a disposition more favorable to the minor.

### **DISPOSITION**

The judgment is affirmed.

We concur: BUTZ, Acting P. J.

MURRAY, J.

HOCH, J.